

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

ADRIAN MAURICE HUDGINS,

Plaintiff,

v.

CIVIL ACTION NO. 5:03-0221

UNITED STATES OF AMERICA,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the court is the petitioner's motion under 28 U.S.C. § 2255 to vacate, set aside or correct sentence. This action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court deny the petitioner's § 2555 motion.

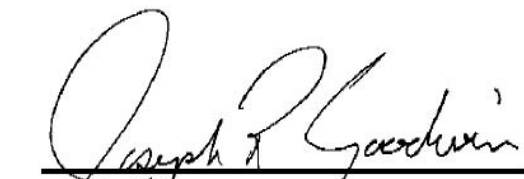
The petitioner timely filed written objections to the Magistrate Judge's findings of fact and recommendation. Petitioner objects to the magistrate's findings that Petitioner's letter is a motion under 28 U.S.C. § 2255. Petitioner contends that his letter does not attack the fine in question. The petitioner's letter states that the "District Court improperly delegated its authority to establish amount and timing of defendant's Fine and restitution payments to Federal Bureau of Prisons or his probation officer." Thus, the court **FINDS** that the letter is indeed an attempt to challenge the validity or legality of the fine in question.

Petitioner also claims that this court has independent jurisdiction under 18 U.S.C. § 3614 "to resentence a defendant any time that defendant is delinquent with the payment of his or her fine or restitution." The court **FINDS** that 18 U.S.C. § 3614 is merely an enforcement mechanism that allows the court to impose further punishment on those individuals who have intentionally failed to pay a delinquent fine or restitution. The court does not interpret petitioner's letter as a request for this court to impose further punishment on him for intentionally failing to pay a delinquent fine or restitution. Consequently, the court **FINDS** that 18 U.S.C. § 3614 is not applicable to petitioner's case and does not give this court independent jurisdiction to "reconsider" his fine. Having reviewed the petitioner's objections *de novo*, the court **FINDS** that they are without merit.

Accordingly, the court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge, and **DENIES** the petitioner's § 2255 motion.

The court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: December 19, 2005



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE